

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

PAUL MARKOWITZ,)	
)	
Plaintiff,)	
)	No. 2:17-cv-02782-TLP-cgc
v.)	
)	JURY DEMAND
DAVID YNGUANZO, et al.,)	
)	
Defendants.)	

**ORDER ADOPTING REPORT AND RECOMMENDATION
AND DISMISSING COMPLAINT**

Under Administrative Order 2013-05, the Magistrate Court submitted a Report and Recommendation (“R & R”) recommending that this Court dismiss Plaintiff’s pro se complaint for failing to state a claim upon which relief can be granted and deny leave to proceed in forma pauperis on appeal. (ECF No. 8.) Plaintiff sues Defendants for alleged violations of his civil and constitutional rights under 42 U.S.C. §§ 1983, 1985, and 1986. (*See* ECF No. 1.) This Court granted him leave to proceed in forma pauperis here. (ECF No. 6.)

ANALYSIS

I. In Forma Pauperis Case Screening

The Court must screen any case proceeding in forma pauperis to determine whether it is baseless or malicious, fails to state a viable claim for relief, or seeks monetary relief against an immune defendant. If a case does fall into one of these categories, “the court shall dismiss the case at any time” *See* 28 U.S.C. § 1915(e)(2). As mentioned above, the Magistrate Court conducts this screening under Administrative Order 2013-05 and 28 U.S.C. § 636(b)(1)(B).

The R & R recommends dismissal of the complaint for failing to state a claim upon which relief can be granted. (ECF No. 8.) In particular, the Magistrate Court recommends: (1) that it is impossible to serve process on the twenty-seven John and Jane Doe defendants because the names are fictitious; (2) that the claims against the Shelby County Jail and the claims against Officer Ynguanzo in his official capacity are duplicative of the claims against Shelby County and the Memphis Police Department, respectively, and thus those claims should be dismissed; and (3) Plaintiff has failed to state a claim under which relief can be granted as to the remaining Defendants. (ECF No. 8 at PageID 50.)

II. Adopting the R & R

Under Federal Rule of Civil Procedure 72(b)(2), “[w]ithin 14 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations.” Fed. R. Civ. P. 72(b)(2). The Magistrate Court issued the R & R on February 5, 2019 and, as a matter of course, the District Court Clerk’s Office staff mails a copy to the plaintiff’s physical address on file. Plaintiff here did not object to the R & R and the time for filing objections has expired. *See* Fed. R. Civ. P. 5(b)(2), 6(d), 72(b)(2).

“When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72(b) advisory committee’s notes to 1983 amendment. Having reviewed the R & R, the Court finds no clear error and ADOPTS the Report and Recommendation (ECF No. 8) in its entirety.

APPELLATE ISSUES

Under 28 U.S.C. §1915(a)(3), the Court must consider whether an appeal by Plaintiff here would be taken in good faith. The good-faith standard is an objective one. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). The test for whether an appeal is taken in good faith is whether the litigant seeks appellate review of any issue that is not baseless. *Id.* The same considerations that lead the Court to dismiss this case at the screening stage also compels the conclusion that an appeal would not be taken in good faith.

As a result, this Court CERTIFIES, under 28 U.S.C. §1915(a)(3), that any appeal here by Plaintiff would not be taken in good faith. Leave to appeal in forma pauperis is DENIED.

If Plaintiff wishes to appeal, he is hereby notified that he must pay the \$505 appellate filing fee in full or move to proceed in forma pauperis on appeal with the Sixth Circuit Court of Appeals. *See* Fed. R. App. P. 24(a)(5).

CONCLUSION

For these Reasons the Court ADOPTS the R & R in its entirety. And Plaintiff is DENIED leave to appeal in forma pauperis. The Court will enter Judgment DISMISSING the complaint.

SO ORDERED, this 2nd day of April, 2019.

s/Thomas L. Parker

THOMAS L. PARKER
UNITED STATES DISTRICT JUDGE